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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL W. ELLSWORTH,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

Case No. C08-5397 FDB/KLS

ORDER DENYING MOTION FOR
THE APPOINTMENT OF COUNSEL
AND FOR OTHER RELIEF

This 28 U.S.C. § 2254 petition has been assigned to United States Magistrate Judge Karen L. Strombom pursuant to 28 U.S. C. § 636(b)(1) and Local MJR 3 and 4. Petitioner has filed a motion for the appointment of counsel, for an extension of time, for an order directing release of his record, and for a copy of his petition. (Dkt. # 5). Petitioner advises the Court that he suffers from internal brain damage and a spinal injury and that in the very near future, he will undergo reconstructive surgery on his spinal column and will be effectively crippled. *Id.*

The court notes that there is no right to have counsel appointed in cases brought under 28 U.S.C. § 2254 unless an evidentiary hearing is required, because the action is civil, not criminal, in

1 nature. *See Terravona v. Kincheloe*, 852 F.2d 424, 429 (9th Cir. 1988); *Brown v. Vasquez*, 952 F.2d
2 1164, 1168 (9th Cir. 1992); and Rule 8(c) of the Rules Governing Section 2254 Cases in the United
3 States District Courts. An evidentiary hearing has not been granted in this case and the claims in the
4 petition are adequately set forth and articulated. Petitioner has not yet demonstrated that an evidentiary
5 hearing is necessary or that he is entitled to one.

6 If Petitioner needs additional time to prosecute this matter, he should provide the Court with
7 documentation of his medical condition and his upcoming surgery so that the Court may make a
8 determination as to any additional time and/or assistance that may be required in this case.

9 Accordingly, it is **ORDERED**:

- 10 (1) Petitioner's motion for counsel and for additional time (Dkt. # 5) are **DENIED without**
11 **prejudice**;
- 12 (2) The Clerk shall send a copy of the petition for writ of habeas corpus (Dkt. # 1-2) to
13 Petitioner; and
- 14 (3) The Clerk is directed to send copies of this Order to Petitioner.

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16 DATED this 25th day of July, 2008.

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19 Karen L. Strombom
20 United States Magistrate Judge
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